

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1362

AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 34-31-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. IC 36-8-12-8 (Concerning volunteer firefighters **and emergency medical services personnel**).

SECTION 2. IC 36-8-12-2, AS AMENDED BY SEA 221-2009, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. As used in this chapter:

"Emergency medical services personnel" means individuals certified by the emergency medical services commission established by IC 16-31-2-1 who:

- (1) as a result of a written application, have been elected or appointed to membership in a volunteer fire department; and
- (2) have executed a pledge to faithfully perform, with or without nominal compensation, the work related duties assigned and orders given to the individuals by the chief of the volunteer fire department or an officer of the volunteer fire department, including orders or duties involving education and training.

"Employee" means a person in the service of another person under a written or implied contract of hire or apprenticeship.

"Employer" means:

- (1) a political subdivision;

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- (2) an individual or the legal representative of a deceased individual;
- (3) a firm;
- (4) an association;
- (5) a limited liability company;
- (6) an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5(a); or
- (7) a corporation or its receiver or trustee;

that uses the services of another person for pay.

"Essential employee" means an employee:

- (1) who the employer has determined to be essential to the operation of the employer's daily enterprise; and
- (2) without whom the employer is likely to suffer economic injury as a result of the absence of the essential employee.

"Nominal compensation" means annual compensation of not more than twenty thousand dollars (\$20,000).

"Public servant" has the meaning set forth in IC 35-41-1-24.

"Responsible party" has the meaning set forth in IC 13-11-2-191(e).

"Volunteer fire department" means a department or association organized for the purpose of answering fire alarms, extinguishing fires, and providing other emergency services, the majority of members of which receive no compensation or nominal compensation for their services.

"Volunteer firefighter" means a firefighter:

- (1) who, as a result of a written application, has been elected or appointed to membership in a volunteer fire department;
- (2) who has executed a pledge to faithfully perform, with or without nominal compensation, the work related duties assigned and orders given to the firefighter by the chief of the volunteer fire department or an officer of the volunteer fire department, including orders or duties involving education and training as prescribed by the volunteer fire department or the state; and
- (3) whose name has been entered on a roster of volunteer firefighters that is kept by the volunteer fire department and that has been approved by the proper officers of the unit.

"Volunteer member" means a member of a volunteer emergency medical services association connected with a unit as set forth in IC 16-31-5-1(6).

SECTION 3. IC 36-8-12-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) Each unit that has a volunteer fire department shall procure insurance in the name of and

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for the benefit of each member of the department. However, if a contract or agreement exists between a unit and a volunteer fire department, the contract or agreement must provide for insurance of the volunteer firefighters **and emergency medical services personnel** in the department in the amounts and with the coverages required by this chapter. Unless the contract or agreement stipulates otherwise, all insurance coverage must be under a group plan, rather than in the name of each individual firefighter **and member of the emergency medical services personnel**. Either the unit or the volunteer fire department, according to the contractor agreement, may undertake procurement of required insurance, but in either case, the costs of coverage must be borne by the unit. If a volunteer fire department serves more than one (1) unit under a contract or agreement, each unit that the department serves shall pay the amount for the insurance coverage determined under the following formula:

STEP ONE: For each census block or other area in a unit that is served by more than one (1) volunteer fire department, divide the population of the area by the number of volunteer fire departments serving the area, and round the quotient to the nearest one thousandth (.001).

STEP TWO: Add the quotients determined under STEP ONE for the unit.

STEP THREE: Determine the sum of the STEP TWO amounts for all of the units served by the same volunteer fire department.

STEP FOUR: Divide the STEP TWO amount for a unit by the STEP THREE amount and round the quotient to the nearest one thousandth (.001).

STEP FIVE: Multiply the costs of the insurance coverage for the volunteer fire department by the quotient determined under STEP FOUR, rounded to the nearest dollar.

(b) A diminution of insurance benefits may not occur under this section because of a change in the insurance carrier or a change as to who actually procures the required insurance.

(c) Each unit that has a volunteer fire department may procure an insurance policy for the benefit of auxiliary groups whose members could be injured while assisting the volunteer firefighters **and emergency medical services personnel** in the performance of their duties.

(d) Each unit that has a volunteer fire department may procure an insurance policy or any other type of instrument that provides retirement benefits as an incentive to volunteer firefighters **and emergency medical services personnel** for continued service.

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(e) An insurance policy or other instrument containing any of the provisions authorized by subsection (d) may not be considered in the computation of nominal compensation for purposes of this chapter.

(f) A volunteer firefighter **or member of the emergency medical services personnel** who becomes covered by an insurance policy or other instrument containing any of the provisions authorized by subsection (d) does not thereby become eligible for membership in the public employees' retirement fund under IC 5-10.3.

(g) If a unit fails to provide the insurance for a volunteer firefighter **or member of the emergency medical services personnel** that this chapter requires it to provide, and a volunteer firefighter **or member of the emergency medical services personnel** suffers a loss of the type that the insurance would have covered, then the unit shall pay to that volunteer firefighter **or member of the emergency medical services personnel** the same amount of money that the insurance would have paid to ~~him~~ **the volunteer firefighter or member of the emergency medical services personnel**.

SECTION 4. IC 36-8-12-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. Each policy of insurance must provide for payment to a member of a volunteer fire department, for accidental injury or smoke inhalation caused by or occurring in the course of the performance of the duties of a volunteer firefighter **or member of the emergency medical services personnel** and for a cardiac disease event proximately caused within forty-eight (48) hours by or occurring in the course of the performance of the duties of a volunteer firefighter **or member of the emergency medical services personnel** while in an emergency situation, as follows:

(1) For total disability that prevents the member from pursuing ~~his~~ **the member's** usual vocation:

(A) **after June 30, 2009, and before July 24, 2009**, a weekly indemnity of not less than two hundred ~~fifty~~ **sixty-two** dollars ~~(\$250)~~; **(\$262)**; and

(B) **after July 23, 2009**, a weekly indemnity of not less than **two hundred ninety dollars (\$290)**;

up to a maximum of two hundred sixty (260) weeks. **After July 23, 2009, the weekly indemnity may not be less than the Indiana minimum wage computed on the basis of a forty (40) hour week.**

(2) For medical expenses, coverage for incurred expenses. However, the policy may not have medical expense limits of less than seventy-five thousand dollars (\$75,000).

SECTION 5. IC 36-8-12-8 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) The policy of insurance required by section 6 of this chapter must provide for the payment of a sum not less than one hundred fifty thousand dollars (\$150,000) to the beneficiary, beneficiaries, or estate of a volunteer firefighter **or member of the emergency medical services personnel** if the firefighter **or member of the emergency medical services personnel** dies from an injury or smoke inhalation occurring while in the performance of the firefighter's **or member of the emergency medical services personnel's** duties as a volunteer firefighter **or member of the emergency medical services personnel** or from a cardiac disease event proximately caused within forty-eight (48) hours by or occurring while in the performance of the firefighter's **or member of the emergency medical services personnel's** duties as a volunteer firefighter **or member of the emergency medical services personnel**.

(b) The policy of insurance must provide for the payment of a sum not less than one hundred fifty thousand dollars (\$150,000) to the volunteer firefighter **or member of the emergency medical services personnel** if the firefighter **or member of the emergency medical services personnel** becomes totally and permanently disabled for a continuous period of not less than two hundred sixty (260) weeks as a result of an injury or smoke inhalation occurring in the performance of the firefighter's **or member of the emergency medical services personnel's** duties as a volunteer firefighter **or member of the emergency medical services personnel**.

(c) The policy of insurance must also provide for indemnification to a member of a volunteer fire department who becomes partially and permanently disabled or impaired as a result of an injury or smoke inhalation occurring in the performance of the firefighter's **or member of the emergency medical services personnel's** duties.

(d) For the purposes of this section, partial and permanent disability or impairment shall be indemnified as a percentage factor of a whole person.

(e) In addition to other insurance provided volunteer firefighters **or emergency medical services personnel** under this chapter, each unit shall be covered by an insurance policy that provides a minimum of three hundred thousand dollars (\$300,000) of insurance coverage for the liability of all of ~~its~~ **the unit's** volunteer firefighters **or emergency medical services personnel** for bodily injury or property damage caused by the firefighters **or emergency medical services personnel** acting in the scope of their duties while on the scene of a fire or other emergency. The civil liability of a volunteer firefighter **or member of**

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**the emergency medical services personnel** for:

- (1) an act that is within the scope of a volunteer firefighter's duties; or
- (2) the failure to do an act that is within the scope of a volunteer firefighter's duties;

while performing emergency services at the scene of a fire or other emergency or while traveling in an emergency vehicle from the fire station to the scene of the fire or emergency or from the scene of a fire or emergency back to the fire station is limited to the coverage provided by the insurance policy purchased under this subsection. A volunteer firefighter **or member of the emergency medical services personnel** is not liable for punitive damages for any act that is within the scope of a volunteer firefighter's **or member of the emergency medical services personnel's** duties. However, if insurance as required under this subsection is not in effect to provide liability coverage for a volunteer firefighter **or member of the emergency medical services personnel**, the firefighter **or member of the emergency medical services personnel** is not subject to civil liability for an act or a failure to act as described in this subsection.

SECTION 6. IC 36-8-12-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) A:

- (1) volunteer firefighter, **a member of the emergency medical services personnel**, or an emergency medical technician working in a volunteer capacity for a volunteer fire department or ambulance company is covered; and
- (2) volunteer working for a hazardous materials response team may be covered;

by the medical treatment and burial expense provisions of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7).

(b) If compensability of the injury is an issue, the administrative procedures of IC 22-3-2 through IC 22-3-6 and IC 22-3-7 shall be used to determine the issue.

(c) This subsection applies to all units, including counties. All expenses incurred for premiums of the insurance allowed under this section may be paid from the unit's general fund in the same manner as other expenses in the unit are paid.

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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